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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/019,995	11/20/2001	Yaeta Endo	3190-012	8810
33432	7590	10/28/2004	EXAMINER	
KILYK & BOWERSOX, P.L.L.C. 53 A EAST LEE STREET WARRENTON, VA 20186			KAM, CHIH MIN	
			ART UNIT	PAPER NUMBER
			1653	

DATE MAILED: 10/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

10/019,995

Applicant(s)

ENDO ET AL.

Examiner

Chih-Min Kam

Art Unit

1653

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 October 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 13.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-11, 15-21 and 23-29.

Claim(s) withdrawn from consideration: 12, 14, 22 and 30.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☒ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2004823.
10. ☐ Other: \_\_\_\_\_

Continuation of 2. NOTE: The amendment to the claims does not resolve the current issues under 35 USC 112, second paragraph, and 35 USC 102 (b). In the amendment of October 12, 2004, claims 1, 4, 6, 10, 11 and 23-29 have been amended. Applicants' response has been fully considered, however, claims 1-11, 15-21 and 23-28 are rejected under 35 USC 112, second paragraph; and claims 1, 4, 5, 23, 26 and 27 are rejected under 35 USC 102(b).

If applicants' amendment were entered, it would have the following response:

1. Claims 1-11, 15-21 and 23-28 are rejected under 35 USC 112, second paragraph as being indefinite as to "any endosperm portion", it is not clear whether the whole endosperm or a portion of endosperm of the cell extract is excluded. Claims 2-11, 15-21 and 23-28 are included in this rejection for being dependent on a rejected claim and not correcting the deficiency of the claim from which they depend. In response, applicant indicates that the use of "substantially excluding an endosperm portion" indicates the entire endosperm is excluded, and the word "portion" serves to differentiate the endosperm from other non-endosperm portions of the cell extract (see pages 9-11 of the specification; page 11 of the response). The response has been considered, however, the argument is not found persuasive because the term "substantially excluding any endosperm portion of said cell extract" can mean either whole endosperm or a portion of endosperm being excluded.
2. Claims 10 and 11 are indefinite as to how the protein synthesis is carried out with molecular sieving or dialysis, the claims cite providing raw material substances that participate protein synthesis and carrying out cell-free protein synthesis, however, the claims do not indicate how molecular sieving or dialysis is involved in the protein synthesis. In response, applicants indicate the claims have been amended by reciting a step of providing raw material substances that participate in cell-free protein synthesis (pages 12-13 of the response). The response has been considered, the argument is found persuasive regarding claims 23-29, thus the rejection is withdrawn. However, the rejection maintains regarding claims 10 and 11 for the reasons as indicated.
3. Claims 1, 4, 5, 23, 26 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Endou (JP-07203984, August 1995). Endou teaches a ribosome inactivation protein, named Torichin (tritin) found in wheat germ can inactivate ribosome by removing an adenine from 28S rRNA (paragraph 0019), and a wheat germ extract is prepared by removing Torichin activity by adding Torichin antibody to the affinity column (paragraph 0029, claims 1, 4 and 5). The efficiency of protein synthesis in a wheat germ cell-free protein synthesis system is increased by using Torichin antibody and removing neutralized Torichin (paragraphs 0031-0038, Drawings 2 and 3, Examples 2-3; claims 23, 26 and 27). In response, applicants indicate that claim 1 has been amended to recite the term "substantially excluding any endosperm portion of the extract" which clearly means that substantially all of the endosperm is removed; Furthermore, Endou only discloses a wheat germ extract prepared by removing one substance, Torochin (tritin), from the extract. Endou does not teach or suggest a preparation by removing substantially all of the endosperm from a cell extract, and exclusion of inhibitory substances other than tritin cannot be accomplished by the method described in Endou. The response has been considered, however, the argument is not found persuasive because the term "substantially excluding any endosperm portion of said cell extract" can mean a portion of endosperm being excluded, and the claim does not recite a specific method to exclude all of the endosperm, thus, the claimed invention is anticipated by Endou, which discloses a wheat germ extract prepared by removing tritin from the extract.

Continuation of 3. Applicant's reply has overcome the following rejection(s): If entered, the rejection of claim 29 under 35 USC 112, second paragraph.

Continuation of 5. does NOT place the application in condition for allowance because: The amendment to the claims does not resolve current issues under 35 USC 112, second paragraph, and 35 USC 102(b).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chih-Min Kam whose telephone number is (571) 272-0948. The examiner can normally be reached on 8.00-4:30, Mon-Fri.

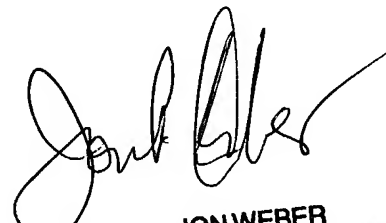
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber can be reached at 571-272-0925. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Chih-Min Kam, Ph. D.  
Patent Examiner

CMK

CMK  
October 22, 2004

  
JON WEBER  
SUPERVISORY PATENT EXAMINER